

### **REMARKS**

Reconsideration of the application in view of the above amendments and the following remarks is respectfully requested.

#### **I. Status of the Claims**

Claims 2-6, 8-11, 13-23, 25-31, 33-41 are pending in this application. Claims 2-6, 8-11 and 36-41 stand rejected under 35 U.S.C. § 112, and claims 13-17, 20, 22, 23, 25-29, 34 and 35 stand rejected under 35 U.S.C. § 102. Claims 2, 13, 18, 21, 25, 30, 33, 36, 38 and 40 have been amended.

#### **II. Rejections Under 35 U.S.C. § 112**

The Examiner rejected claims 2-6, 8-11 and 36-41 under 35 U.S.C. § 112, stating that there is no support for the limitation “a crossover strap extending from one of the contoured panels to another contoured panel.” While the Applicant continues to disagree with the Examiner’s position, in the interest of moving the prosecution of the present application forward, the Applicant has amended claims 2, 36, 38 and 41 as suggested by the Examiner. The Applicant therefore requests that the Examiner’s rejection be withdrawn.

In addition, the Examiner rejected claims 2-6, 8-11 and 36-41 under 35 U.S.C. § 112, stating that there is no support for the recited “headpiece” limitation. The Applicants strongly disagree. Paragraphs 20 and 21 of the present application state:

Contoured panels 40, 42 are crescent or arch-shaped having an upper edge 48 having a concave curvature and a lower edge 50 having a convex curvature. Each contoured panel 40, 42 further has a rear joining edge 52, which is connected to rear joining piece 32 and a front joining edge 54, which is connected to front joining piece 46. Rear joining edge 52 of each panel is preferably longer in length than front joining edge 54, so that each contoured panel 40, 42 generally tapers from its rear joining edge 52 to its front joining edge 54. Joining pieces 32 and 46 and contoured panels 40 and 42 are preferably stamped from material using a die cut process so that the resulting pieces are flat. However, when positioned on the head, the *contoured panels* and *joining pieces* form a substantially truncated conical or frusto-conical shaped *headpiece*. ... The substantially frusto-conical shape and stretchiness of the *headpiece* allow the panels to fit a wide range of patients’ heads.

Headgear 30 optionally, yet preferably, has an adjustable crossover strap 56 adapted to fit across the top of the patient's head from a middle portion 58 of one contoured panel to a middle portion 58 of the other contoured panel.

The above quoted structure is clearly illustrated in Figure 2, which shows the headgear 30 and the parts thereof including, without limitation, the headpiece (i.e., contoured panels 40, 42, and joining pieces 32, 46), the connecting straps 36, 38, 68 and the crossover strap 56. The Applicant respectfully submits that the limitations of current claims 2-6, 8-11 and 36-41 (which recite the "headpiece", the "connecting strap" and the "crossover strap", if present, as parts of the "headgear") are fully supported by this description. The Applicant therefore requests that the Examiner's rejection be withdrawn.

The Applicant respectfully submits that claims 2-6, 8-11 and 36-41 are thus allowable.

### **III. Rejections Under 35 U.S.C. § 102**

Claims 13-17, 20, 22, 23, 25-29, 34 and 35 stand rejected under 35 U.S.C. § 102 as being anticipated by United States Patent No. 5,542,128 to Lomas.

Claim 13, as amended, recites a headgear including a headpiece and a connecting strap, wherein the headpiece includes "a plurality of contoured panels, each panel including an upper edge having a length and a lower edge having a length, wherein in each contoured panel the length of the upper edge is shorter than the length of the lower edge; a rear joining piece positionable along a rear portion of a patient's head, wherein the lower edge of each contoured panel is connected to the rear joining piece; and a front joining piece positionable along a front portion of such a patient's head, wherein the upper edge of each contoured panel is connected to the front joining piece" and "wherein the connecting strap extends from either the rear joining piece or the front joining piece." Similarly, claim 25, as amended, recites a headgear including a headpiece and a connecting strap, wherein the headpiece includes "a rear joining piece positionable along a rear portion of a patient's head; a front joining piece positionable along a front portion of such a patient's head; and a first contoured panel and a second contoured panel, ... each of the first and second contoured panels including an upper edge having a length and a lower edge having a length, wherein in each of the first and second contoured panels the length

of the upper edge is shorter than the length of the lower edge and wherein each lower edge is connected to the rear joining panel and each upper edge is connected to the front joining panel,” and “wherein the connecting strap extends from either the rear joining piece or the front joining piece.”

Lomas discloses a hood formed by two crescent shaped halves 9 and 10 which are sewn together such that the top portions of the crescent shaped halves 9 and 10 form an apex 13. The apex 13 is provided with a connection means 14 for connecting the hood to a top edge of a face mask 15. The bottom portions of the crescent shape halves 9 and 10 form a back piece 16 having a slit 25 (Figures 3-5). The free ends of the slit 25 include connection means 26 and 27 whereby the width of the back piece 16 can be adjusted to conform the hood to the shape of the head of the wearer. Also, the crescent shaped halves 9 and 10 each include an arm 17 and 18, respectively. The arm 17 is provided with a connection means 19 for connecting the hood to a first side of a mask, and the arm 18 is provided with a connection means 20 for connecting the hood to a second side of a mask.

Lomas does not disclose “a plurality of contoured panels ... wherein in each contoured panel the length of the upper edge is shorter than the length of the lower edge,” “a rear joining piece positionable along a rear portion of a patient’s head, wherein the lower edge *of each contoured panel* is connected to the rear joining piece; and a front joining piece positionable along a front portion of such a patient’s head, wherein the upper edge *of each contoured panel* is connected to the front joining piece” and “wherein the connecting strap [adapted to releasably connect the headgear to the connector element of the interface device] extends from either the rear joining piece or the front joining piece” as recited in claim 13 and in a similar manner in claim 25. Accordingly, because Lomas does not disclose each and every limitation of claims 13 and 25, those claims are not anticipated by Lomas. The Applicants therefore request that the rejection be withdrawn. In addition, because claims 14-23, 26-31 and 33-35 depend, directly or indirectly, from one of claims 13 and 25, they are likewise believed to be allowable.

**IV. Claims 18, 21, 30 and 33**

Former dependent claims 18, 21, 30 and 33 were neither formally rejected nor even discussed in the prior two office actions (July 28, 2008 and February 4, 2009). The Applicant believes that those dependent claims are allowable, and the Examiner seems to be in agreement. Thus, the Applicant has in the present Amendment rewritten those claims in independent form, including all of the limitations of the claims from which they originally depended (claims 13 and 25).

**CONCLUSION**

Based on the foregoing remarks, the Applicant respectfully submits that claims 2-6, 8-11, 13-23, 25-31, 33-41 are in condition for allowance. If a telephone conference would facilitate prosecution of this application in any way, the Examiner is invited to contact the attorneys identified below.

This response is being filed within the three-month statutory response period which expires on May 4, 2009. In addition, no additional claim fees are believed to be required as a result of the above amendments to the claims. Nevertheless, the Commission is authorized to charge any fee required under 37 C.F.R. §§ 1.16 or 1.17 to deposit account no. 14-1270.

Respectfully submitted,

By /Michael W. Haas/

Michael W. Haas

Reg. No.: 35,174

Tel. No.: (724) 387-5026

Fax No.: (724) 387-5021

Philips Intellectual Property & Standards  
1010 Murry Ridge Lane  
Murrysville, PA 15668-8525

Note: The Commissioner is authorized to charge any fee required under 37 C.F.R. §§ 1.16 or 1.17 to deposit account no. 14-1270.